

On January 5, 2005 appellant, then a 59-year-old screener, experienced lower back and right leg pain while lifting and loading a duffle bag. The Office accepted the claim for lumbar

sprain/strain and right leg sprain/strain.¹ Appellant lost intermittent time from work from January 23, 2005 and returned to part-time modified duty on February 9, 2005. She returned to full-time limited duty on February 10, 2005. On May 14, 2006 appellant stopped work due to the employing establishment's inability to accommodate her medical restrictions. She was subsequently referred for vocational rehabilitation efforts for reemployment. The Office paid appropriate benefits. Appellant resigned from the employing establishment on April 18, 2007.

In a September 6, 2005 report, appellant's treating physician, Dr. Curtis W. Poindexter, a physiatrist, diagnosed as industrial injuries: lumbar spine injury of January 5, 2005; chronic low back pain; and chronic dependence on narcotic pain medication. Nonindustrial conditions were bilateral ankle swelling with possible achilles tendinitis and possible sinusitis/bronchitis. Dr. Poindexter advised appellant could work light duty. In a December 5, 2005 report, he reiterated the diagnoses. In a March 2, 2006 medical slip, Dr. Poindexter indicated that appellant could work overtime as needed.

In a June 6, 2006 report, Dr. Bruce M. Ballard, a Board-certified orthopedic surgeon and Office referral physician, reviewed the history of injury and presented his findings on examination. He opined that the right leg strain and the right lumbar strain had resolved as a soft tissue strain would abate over time. Dr. Ballard noted, however, that appellant had persistent pain in the right buttocks and low back and indicated there were no preexisting conditions. He advised that appellant was able to work full time within restrictions and would not benefit from further medical treatment. In a June 15, 2006 addendum, Dr. Ballard advised that appellant had permanent functional loss of the lumbar spine. He opined that her permanent restrictions were probably related to the work-related injury as she had no symptoms before the injury. Dr. Ballard speculated that she injured the deep ligamentous structures of the lumbar spine.

In an April 26, 2007 letter, the Office advised appellant to submit a current medical report from her attending physician. In a May 3, 2007 work capacity evaluation form, Dr. Poindexter found that appellant could work with permanent restrictions. He indicated that she had chronic pain problems and difficulty with mobility and lifting. No diagnoses were provided.

On May 22, 2007 the Office referred appellant to Dr. Aubrey Swartz, a Board-certified orthopedic surgeon, for a second opinion. Dr. Swartz was provided with a copy of appellant's medical records and a statement of accepted facts.

In a June 25, 2007 report, Dr. Swartz reviewed the medical record and statement of accepted facts. He noted that appellant was tender to light touch in the right sacroiliac region, but there was no muscle spasm. Dr. Swartz noted pain with straight leg raise on the right at 60 degrees and on the left at 70 degrees as well as pain in the low back with flexion of the right knee to 20 degrees and with flexion of the right great toe. However, he could straight leg raise appellant to 90 degrees bilaterally without any pain when she sat with her feet extending over the side of the examination table. Based on normal examination findings, Dr. Swartz diagnosed chronic and preexisting degenerative disc disease at L4-5 and L5-S1. He found no current

¹ Under File No. xxxxxx466, the Office accepted a July 28, 2004 lumbosacral strain. Appellant was temporary totally disabled from July 29 until December 29, 2004, when she returned to full duty.

injury-related factors of disability, noting there were no objective findings and no subjective complaints. Dr. Swartz opined any aggravation due to the employment injury was temporary and ceased on the date appellant stopped work on May 14, 2006. He found no material changes resulted from the work injury. Dr. Swartz opined that appellant required no further treatment with respect to her industrial injury and the medication she was prescribed had no relationship to her industrial injury. He stated that appellant's nonindustrial and preexisting degenerative disc disease from L4-S1, her age and light weight, prevented her from returning to her date-of-injury position as a screener. Dr. Swartz advised that appellant was employable if she avoided the work activities that would aggravate her nonindustrial conditions.

By notice dated August 6, 2007, the Office proposed to terminate appellant's wage-loss and medical benefits as the weight of medical evidence demonstrated that the accepted conditions ceased without residuals. It accorded determinative weight to the opinion of Dr. Swartz, the second opinion specialist.

On August 14, 2007 appellant disagreed with Dr. Swartz' opinion that any aggravation ceased when she stopped work on May 14, 2006. She provided a copy of a previously submitted August 16, 2004 x-ray report, which noted osteoarthritis at L4-5 and L5-S1. Appellant contended that her osteoarthritis was caused by her work injury. She advised that she never had back problems before and would seek a private evaluation. Appellant saw Dr. Poindexter at least once a month for treatment. She also indicated that the work injury damaged the L4-5 disc as indicated by Dr. Ballard's 2006 report.

By decision dated September 12, 2007, the Office terminated appellant's wage-loss and medical benefits effective that day, finding that the accepted injury had ceased without residuals.

Appellant disagreed with the Office's action and requested a telephonic hearing, which was held January 7, 2008.

In a December 27, 2007 report, Dr. James Gebhard, a Board-certified orthopedic surgeon, noted the history of injury and his review of objective testing, which included an October 18, 2007 magnetic resonance imaging (MRI) scan report of the lumbar spine and December 27, 2007 x-rays of the lumbar spine. He diagnosed back pain secondary to degenerative changes, indicating that the L5-S1 level appeared to have more significant changes. Dr. Gebhard diagnosed nerve pain in the left leg, which he opined was coming from the foraminal narrowing and could possibly cause some of her back pain as well. A copy of the October 18, 2007 MRI scan report was attached together with an information sheet on the topics: "The Vertebral End-Plate: The Achilles' Heal of the disc" and "Stenosis as a result of DDD."

By decision dated April 3, 2008, an Office hearing representative affirmed the September 12, 2007 decision.

LEGAL PRECEDENT

Once the Office has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits.² Having determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.³ The Office's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴

ANALYSIS

The Board finds the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Swartz, who provided a second opinion evaluation. In a June 25, 2007 report, Dr. Swartz listed his findings on physical examination and concluded that appellant had no objective ongoing residuals related to the January 5, 2005 employment injury, accepted for a lumbar sprain/strain and a right leg sprain/strain. He noted that appellant presented a normal examination. Dr. Swartz advised that appellant reported subjective complaints and had limited straight leg raising on examination. However, appellant exhibited no pain in straight leg raising to 90 degrees when he sat her up on the examining table with her feet extended over the side of the table. Dr. Swartz advised that appellant's current condition, preexisting a lumbar degenerative disc disease, was connected to the work injury by aggravation. However, such aggravation was temporary and ceased on May 14, 2006, the date she stopped working. He further found no material changes to the spine resulting from the employment injury and she did not require further medical treatment with respect to the employment injury. Dr. Swartz advised that appellant was employable but attention had to be paid to her nonemployment-related conditions of chronic and preexisting degenerative disc disease at L4-5 and L5-S1, her age and light weight.

Appellant submitted reports dated September 6 and December 5, 2005, from Dr. Poindexter, a treating physician, which predate the time the Office terminated benefits. These reports are of no value in establishing that she had any residuals of her work injuries as they predate the time of the termination of benefits. In his remaining reports of record, a March 2, 2006 medical slip and a May 3, 2007 work capacity evaluation, Dr. Poindexter failed to provide any diagnoses of appellant's condition. Thus, these reports are of diminished probative value as to any employment-related residuals.

Appellant contends that Dr. Ballard opined in his 2006 report that she had damage at L4-5 and L5-S1. Dr. Ballard's July 8, 2006 report stated that appellant's permanent functional loss of the lumbar spine was probably related to the employment injury as she had no symptoms before the injury. He also speculated that appellant injured the deep ligamentous structures of

² *Bernadine P. Taylor*, 54 ECAB 342 (2003).

³ *Id.*

⁴ *Gewin C. Hawkins*, 52 ECAB 242 (2001).

the lumbar spine. The Board finds, however, that Dr. Ballard's opinion is equivocal regarding causal relationship. The Board has held that medical opinions which are speculative or equivocal in character have little probative value.⁵ Moreover, the Board has found that an opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury but symptomatic afterwards, is insufficient, without supporting rationale, to establish causal relationship.⁶ Dr. Ballard's opinion is speculative regarding causal relation and was not supported by medical rationale explaining how or why appellant's functional loss of the lumbar spine was caused by the employment injury.⁷

In a December 27, 2007 report, Dr. Gebhard noted appellant's history of injury and provided examination findings. He diagnosed left leg nerve pain and back pain secondary to degenerative changes. Dr. Gebhard did not specifically support causal relation but related appellant's condition to his degenerative condition which has not been accepted by the Office as employment related.

The October 18, 2007 MRI scan report submitted by appellant does not support any continuing condition as it does not address whether her employment caused any diagnosed condition. Appellant's assertion that she had work-related osteoarthritis based on an August 16, 2004 x-ray report is unfounded. The August 16, 2004 x-ray report, to which appellant refers is merely suggestive of osteoarthritis at L4-5 and L5-S1. Additionally, the x-ray report does not address the issue of causal relationship and, thus, is of diminished probative value.⁸

Appellant also submitted an information sheet on topics concerning vertebral end plate and stenosis. However, the Board has held that newspaper clippings, medical texts and excerpts from publications are of no evidentiary value in establishing the causal relationship between a claimed condition and an employee's federal employment. Such materials are of general application and are not determinative of whether the specific condition claimed is related to the particular employment factors alleged by the employee.⁹

Dr. Swartz' June 25, 2007 report is based on an accurate factual background and provides sufficient medical rationale for his conclusion.¹⁰ The Office met its burden of proof to terminate

⁵ *L.R. (E.R.)*, 58 ECAB ____ (Docket No. 06-1942, issued February 20, 2007); *Kathy A. Kelley*, 55 ECAB 206 (2004).

⁶ *John F. Glynn*, 53 ECAB 562 (2002).

⁷ *Jimmie H. Duckett*, 52 ECAB 332 (2001).

⁸ *See Michael E. Smith*, 50 ECAB 313 (1999). *See also Jaja K. Asaramo*, 55 ECAB 200 (2004) (where an employee claims that a condition not accepted or approved by the Office was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury).

⁹ *William C. Bush*, 40 ECAB 1064, 1075 (1989).

¹⁰ *Michael S. Mina*, 57 ECAB 379 (2006) (in accessing medical evidence, the weight of such evidence is determined by its reliability, its probative value and its convincing quality; the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion, are facts which determine the weight to be given to each individual report).

appellant's benefits as the weight of the medical evidence indicates that residuals of the employment-related condition had ceased effective September 12, 2007.

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits effective September 12, 2007.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs decision dated April 3, 2008 is affirmed.

Issued: January 28, 2009
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board